

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID SCOTT

Plaintiff,

v.

SCOTT FREED, *ET AL.*,

Defendants.

Case No. 04-70714

Companion Case No. 03-75069

HONORABLE ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

MAGISTRATE JUDGE
STEVEN D. PEPE

**ORDER GRANTING PLAINTIFF COUNSEL'S MOTION TO WITHDRAW [D/E # 77]
& DENYING PLAINTIFF'S MOTION FOR RELIEF OF JUDGMENT [D/E # 73]**

On February 28, 2007, this Court entered an Order adopting the Magistrate's Report and Recommendation on Defendant's Motion for Summary Judgment causing this case to be dismissed with prejudice based on a statute of limitations issue. On March 20, 2007, Plaintiff acting without the advice or knowledge of his *pro bono* counsel filed a Motion for Relief of Judgment pursuant to Federal Rule of Civil Procedure 60(b)(6). On March 26, 2007 Plaintiff's counsel filed a notice of appeal to challenge this Court's ruling. On March 28, 2007, after learning about Plaintiff's *in propria persona* motion, Plaintiff's Counsel filed a motion to withdraw as counsel citing David Scott's actions after this Court's February 28, 2007 Order and a November 11, 2006 letter which asked this Court to substitute counsel. Plaintiff David Scott has filed a response to Counsel's Motion to Withdraw requesting that it be denied. The Sixth Circuit on April 12, 2007 granted Counsel's Motion to Withdraw from the Appeal. In as much as Plaintiff's open Motion before this Court is not controlled by the Sixth Circuit's Order,

IT IS HEREBY ORDERED that Plaintiff Counsel's Motion to Substitute or Withdraw Counsel is **GRANTED** as to both *Scott v. Freed, et al.*, case number 04-70714 and in its companion case *Scott v. Cartensen, et al.*, case number 03-75069. Because Plaintiff has shown both an aptitude for the practice of law and a desire to act both against and without counsel's advice, this Court finds no reason to appoint additional *pro bono* counsel. Thus, Plaintiff's

request is **DENIED**.

In terms of Plaintiff's Motion for Relief of Judgment, Plaintiff has filed the motion pursuant to FRCP 60(b)(6). Under FRCP 60(b)(6), this Court may grant relief for "any other reason justifying relief from the operation of judgment." Plaintiff's motion relies on two theories first that the Magistrate and this Court mistakenly failed to consider the law as he presented it in his June 15, 2006 Response to Defendants' Motion for Summary Judgment. This Court finds Plaintiff's argument to be unpersuasive.

Plaintiff's related, second argument is that his appointed, *pro bono* counsel was ineffective for failing to cite cases in which courts have found a prisoner's request for rehearing of a prison hearing officer's adjudication of a major misconduct constitutes exhaustion of administrative remedy and otherwise failed to raise issues raised by Plaintiff in *pro per*. This issue, if valid, is more properly raised on appeal as ineffective assistance of counsel claim.

Having considered Plaintiff's Motion, the Court is unpersuaded that relief from the judgments is warranted in this instance, thus,

IT IS HEREBY ORDERED that Plaintiff's Motion for Relief of Judgment from this Court's February 28, 2007 Order Adopting the Magistrate's Report and Recommendation causing the case to be dismissed is **DENIED**.

IT IS SO ORDERED.

S/ARTHUR J. TARNOW
Arthur J. Tarnow
United States District Judge

Dated: June 4, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 4, 2007, by electronic and/or ordinary mail.

S/THERESA E. TAYLOR

Case Manager